IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 633 OF 2005

Mary Joy Pawar ...Petitioner

Versus

Ashok Ram ...Respondent

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Mr. Mahendra Bajpai i/b Ashoka Law Firm, counsel for Petitioner

Mr. C.M. Korde with Mr. VIshal Kasbekar with Mr. Girish Kulkarni i/b Mr. Jeevan S. Goge, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 3RD MARCH, 2005

P. C.:-

1. Heard Mr. Bajpai, the learned counsel for the petitioner and Mr. Korde, the learned senior counsel for the respondent.

2. The petitioner is the plaintiff in S.C. Suit No. 2375 of 2003, the present respondent is the defendant therein. In the said suit the trial court finalised the issues to be decided on 12.2.2004. In all six issues were framed. However, an application came to be submitted under Order XIV Rule 5 of C.P.C. for amending/recasting the issues on or about 25.2.2004 and draft issues at Exh.1 were annexed to the said

application by the defendant. This application was opposed by the plaintiff and after hearing both the parties at length, the learned Judge of the Trial Court was pleased to add some issues and these issues were recast on 1.4.2004. This order of recasting the issues on 1.4.2004 is the main challenge in this petition.

3. It appears that the plaintiff also submitted an application under Order XIV Rule 5 of C.P.C. on or about 7.4.2004 for deletion of issue Nos. 1 to 7 framed on 1.4.2004 and this application was rejected by the trial Court on 5.10.2004. Hence, this petition.

4. If regards be had to the plaint of the suit as presented by the plaintiff, she claims that she was adopted by Sister Pouline on 12.5.1980 and on account of the said adoption, she continued to stay in the suit premises alongwith Sister Pouline. On adoption, the name of the plaintiff was also registered in the ration card by Sister Pouline as her niece. Sister Pouline died on 22.5.2003 and the plaintiff alleged that her possession over the suit premises was being disturbed by the defendant and therefore, she approached for perpetual injunction prohibiting the entry of the defendant in any manner and disturbing the possession in respect of the suit premises. The

issues added by the order dated 1.4.2004 are as under:-

(2) Whether the plaintiff prove that she is the niece and adopted child of deceased Ms. Pauline Ovid who was original owner of the suit premises ?

(3) Does plaintiff prove that she was in possession of suit premises on 24.2.2003 and even thereafter upto the day of filing suit ?

(6) Does defendant prove that he handed over possession suit premises to the plaintiff on 3.6.2003 as per order of Hon'ble High Court dated 3.6.2003 in A.O. No. 365 of 2003 and C.A. No. 547 of 2003 ?

(7) Does plaintiff prove that he is entitled to take back possession of suit premises from the Court Receiver after court Receiver is discharged ?

(8) Does plaintiff prove that he is in use occupation and possession of suit

premises validly since 24.2.2003 ?

. In addition, some other issues earlier framed on 12.2.2004 were recast.

5. Shri. Bajpai, the learned counsel for the petitioner plaintiff submitted that the added issues were irrelevant and more particularly the plaintiff could not be called upon to prove her title or factum of adoption. Reliance was placed on the decision in the case of **Nair Service Society Ltd. Vs. K.C. Alexander and Ors. (AIR 1968 SC 1165)**, by referring to the provisions of the Specific Relief Act, 1877. Admittedly, the petitioner was not tenant, nor does she claim ownership over the suit premises. In the pleadings set out in the plaint itself, she claims her title on the basis of her adoption by Sister Poulin and her claim that, on her adoption she started staying in the suit premises alongwith Sister Pouline and therefore, added issue Nos.2 and 3 cannot be said to be irrelevant or unwarranted. The issues 6 to 8 arise on account of the order passed by this Court. Issues added or recast by the trial Court on 1.4.2004 do not cause any prejudice to the case of the plaintiff and, therefore, there is no merit in the challenge to the addition or recasting of the issues as has been done by the trial Court on

1.4.2004.

6. Application submitted by the petitioner on 7.4.2004 has been rejected by a short order dated 5.8.2004. The learned Judge of the trial Court noted that the issues were recast on 1.4.2004 after hearing the learned counsel for both sides. The deletion of issues 1 to 7 as prayed for in the said application has been rightly turned down.

7. Hence, this petition must fail and the same is hereby rejected summarily.

8. However, my attention was invited by Mr. Bajpai, the learned counsel for the petitioner-plaintiff to certain averments in paragraph 16 of the affidavit in reply and which concerns individually to the legal profession as such and Mr. Korde, the learned senior counsel fairly conceded that the said averments from paragraph 16 must be deleted as they should not have been at the first place, incorporated in the affidavit in reply. Order accordingly.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 503 OF 2005
ALONGWITH
CIVIL APPLICATION ST. NO.4279 OF 2005
IN
WRIT PETITION NO. 633 OF 2005

Mary Joy Pawar ...Applicant

Versus

Ashok Ram ...Respondent

.....

Mr. Mahendra Bajpai i/b Ashoka Law Firm, counsel for Applicant

Mr. C.M. Korde with Mr. VIshal Kasbekar with Mr. Girish Kulkarni i/b Mr. Jeevan S. Goge, counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 3RD MARCH, 2005

P. C.:-

. In view of the disposal of writ petition No.633 of 2005, these civil applications do not survive and the same are disposed of as such.